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No. 427

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

VIRGINIA PETROLEUM JOBBERS ASSOCIATION, *Petitioner*

v.

FEDERAL POWER COMMISSION, et al., *Respondents*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Virginia Petroleum Jobbers Association prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above-styled cause on June 22, 1961.

OPINIONS BELOW

The opinion of the Court of Appeals (App., *infra*, p. 1a) is not yet reported. The order of the Federal Power Commission (R. 197) affirmed by the Court of Appeals is reported at 23 F.P.C. 245. The order of the Commission denying Petitioner's application for subpoena *duces tecum* (R. 172), the approval of which by the Court of Appeals gives rise to this Petition, is reported at 21 F.P.C. 901.

JURISDICTION

The judgment of the Court of Appeals was entered on June 22, 1961. The jurisdiction of the Court of Appeals was based on Section 19(b) of the Natural Gas Act, 15 U.S.C. 717r(b). The jurisdiction of this Court is based on Section 1254(1) of the Judicial Code, 28 U.S.C. 1254(1).

QUESTION PRESENTED

In a proceeding on an application under Section 7(a) of the Natural Gas Act, 15 U.S.C. 717f(a), the Federal Power Commission found that a proposed project for the sale and distribution of natural gas would be in the public interest. In so doing the Commission relied almost exclusively upon oral and documentary evidence by a professional engineer concluding that the project would be economically feasible. Petitioner sought a subpoena *duces tecum* to another professional engineer who had, at the instance of the applicant, studied the economic feasibility of a substantially identical project and rendered a written report concluding that it was highly doubtful.

The question presented is whether the Commission properly refused to issue the subpoena on the sole

ground that to do so would compel testimony from an expert about matters that had come to his knowledge in his capacity as an expert at the fees of a lay witness, and that, to quote from its order, Petitioner "should arrange for compensation to be paid him as an expert witness, and for his voluntary attendance at the hearing." (R. 172.)

STATUTES AND RULE INVOLVED

Administrative Procedure Act, Section 6(c), 5 U.S.C. 1005(c):

> "Subpenas.—Agency subpenas authorized by law shall be issued to any party upon request and, as may be required by rules of procedure, upon a statement or showing of general relevance and reasonable scope of the evidence sought. Upon contest the court shall sustain any subpena or similar process or demand to the extent that it is found to be in accordance with law and, in any proceeding for enforcement, shall issue an order requiring the appearance of the witness or the production of the evidence or data within a reasonable time under penalty of punishment for contempt in case of contumacious failure to comply."

Natural Gas Act, Section 14(c), 15 U.S.C. 717m:

> "For the purpose of any investigation or any other proceeding under this act, any member of the Commission, or any officer designated by it, is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records which the Commission finds relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in

the United States or at any designated place of hearing. Witnesses summoned by the Commission to appear before it shall be paid the same fees and mileage that are paid witnesses in the courts of the United States."

Rules of Practice and Procedure of the Federal Power Commission, Section 1.23; 18 C.F.R. 1.23:

"Subpenas. (a). *Issuance.* Subpenas for the attendance of witnesses or for the production of documentary evidence, unless directed by the Commission upon its own motion, will issue only upon application in writing to the Commission or the presiding officer, except that during sessions of a hearing in a proceeding, such application may be made orally on the record before the Commission or presiding officer, who shall specify as nearly as may be the general relevance, materiality, of the evidence sought and to issue such subpenas in accordance with such determination. Such written applications shall be verified and shall specify as nearly as may be the general relevance, materiality, and scope of the testimony or documentary evidence sought, including, as to documentary evidence, specification as nearly as may be, of the documents desired and the facts to be proved by them in sufficient detail to indicate the materiality and relevance of such documents."

STATEMENT OF THE CASE

The Blue Ridge Gas Company (Blue Ridge) applied to the Federal Power Commission (Commission) for an order under Section 7(a) of the Natural Gas Act, 15 U.S.C. 717f(a), requiring Atlantic Seaboard Corporation, a natural gas pipeline subject to the jurisdiction of the Commission, to establish physical connection with facilities proposed to be constructed by Blue Ridge and to furnish it with a supply of gas for sale

and distribution in Harrisonburg, Virginia and its environs. Petitioner, an non-profit organization of wholesale and retail distributors of petroleum products whose members would compete in the fuel market proposed to be served by Blue Ridge, filed a petition to intervene in the proceeding on Blue Ridge's application. Intervention by Petitioner was denied, a brief hearing was held at which Blue Ridge's application was unopposed, and an order granting it was issued. Upon petitions to review both the order denying Petitioner intervention and the order granting Blue Ridge's application the Court of Appeals for the District of Columbia Circuit reversed both orders and remanded the proceeding to the Commission with directions to permit Petitioner to intervene and to hold hearings *de novo* on the application. *Virginia Petroleum Jobbers Association* v. *F.P.C.*, 105 App. D.C. 172, 265 F. 2d 364.

Thereafter Petitioner participated as an intervenor in the reopened proceedings. To support its contention that its project was economically feasible, and that it was therefore necessary and desirable in the public interest to grant its application, Blue Ridge introduced in evidence and relied upon a report and expert testimony by one Joe E. Ross, a professional engineer in the employ of Ford, Bacon and Davis, a private engineering firm employed by Blue Ridge. Witness Ross' report contained facts, opinions and estimates respecting population, fuel use, cost of the project, number and type of customers, volumes of gas saleable, and expenses and revenues.

During the course of the proceeding Petitioner discovered that Blue Ridge had commissioned Ebasco Services, Incorporated, also a private engineering firm,

to make a study and report on the economic feasibility of a substantially identical project.[1] This study and report were made by one Alan E. Lockwood, a professional engineer in the employ of Ebasco. His report, like that of Witness Ross, contained facts, opinions and estimates respecting population, fuel use, cost of the project, number and type of customers, volumes of gas saleable, and expenses and revenues. Unlike that of Witness Ross, Mr. Lockwood's report concluded that the economic feasibility of the proposed project was highly doubtful.

Petitioner applied to the Examiner of the Commission conducting the hearing for a subpoena *duces tecum* to Mr. Lockwood because the principal contested issue was the economic feasibility of the project and the heart of Blue Ridge's case was Mr. Ross' report and testimony thereon. The Examiner found that the evidence sought to be adduced through Mr. Lockwood was relevant and material, but concluded that, since Mr. Lockwood was an expert, he could not be compelled to appear at a lay witness' fee (R. 167). Instead, he said that Petitioner should arrange for Mr. Lockwood's voluntary appearance at the hearing at an expert's compensation (R. 167). Thereafter, Petitioner filed with the Commission a formal written application for a subpoena *duces tecum* to Mr. Lockwood under Section 1.23(a) of its Rules of Practice and Procedure (R. 163). The Commission denied the application on the same ground as the Examiner (R. 172, 21 F.P.C. 901).

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[1] Ebasco was so commissioned before all of the capital stock in Blue Ridge was sold and the new owners thereof changed its corporate name from Consumers Utility Company to Blue Ridge Gas Company.

The crucial issue before the Commission was the economic feasibility of Blue Ridge's project, and the evidence thereon was in sharp conflict. In resolving this issue the Examiner, and the Commission in adopting his initial decision, relied almost exclusively on the report and testimony of Mr. Ross. As the Examiner stated in his decision "Ford, Bacon & Davis, an engineering firm of the highest standing was employed by [Blue Ridge], to prepare an economics and engineering report respecting the distribution project. According to this report, the project is economically feasible." (R. 178). In accepting Mr. Ross' estimate of gas sales and revenues the Examiner said:

> "The engineer who made the estimates has had broad experience in forecasting sales revenues from distribution projects. He stated that in his opinion the estimates were 'reasonable and possibly conservative'. Finally, the engineering report is that of a firm of excellent reputation. . . ." (R. 180).

In these circumstances the report and testimony of Mr. Lockwood casting doubt on the economic feasibility of the project were relevant and material, as indeed the Examiner and the Commission concluded[2] (R. 167, 172).

The Court of Appeals upheld the action of the Commission denying the subpoena on the general ground that whether evidence sought by subpoena is of reasonable scope is a problem for the Commission, and that

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[2] In denying the subpoena the Commission stated that it was not passing on the relevance or materiality of Mr. Lockwood's evidence. But if it could reasonably have found that it was not relevant or material it would have been sufficient to have denied the application for subpoena on that ground. Cf. *Cia Mexicana de Gas* v. *F.P.C.*, 167 F. 2d 804 (C.A. 5th, 1948).

"it is in a better position than the courts to judge the proper method of compensation for the expert testimony which necessarily comprises a substantial portion of the evidence before it." (App., *infra*, p. 4a).

REASONS FOR GRANTING THE WRIT

An Important Unsettled Question of Federal Law

To the best of our knowledge the question presented is one of first impression in any federal court. It is unquestionably one of vital importance to the orderly and proper discharge of the responsibilities of federal administrative agencies within the framework of the procedural standards established by the Administrative Procedure Act. Until this question is resolved that Act cannot fulfill its function "as a guide to him who seeks fair play and equal rights under law, as well as to those invested with executive authority."[3] Hence we submit that the decision of the Court of Appeals resolves "an important question of federal law which has not been, but should be, settled by this Court." Rule 19, 1(b) of this Court.

Moreover, we submit that the answer to the question given by the Court of Appeals is not only erroneous, but, if allowed to stand as a precedent, will effectively negate the requirement of Section 6(c) of the Administrative Procedure Act that agency subpoenas "be issued to any party in interest upon request and, as may be required by rules of procedure, upon a statement or showing of general relevance and reasonable scope of the evidence sought." In cavalierly leaving the matter of the issuance of administrative subpoenas to the unguided discretion of the administrative agencies the

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[3] These are the words of the late Pat McCarran, Chairman of the Senate Committee on the Judiciary at the time the Administrative Procedure Act became law.

Court below invited a return to the " 'haphazard' and often unfair method of issuance" which it was the purpose of Section 6(c) to stop.[4] It thus plainly abdicated its duty to assure compliance with the Administrative Procedure Act, and in so doing thwarted the Congressional intent specifically stated as follows:

> "Interpretation and Enforcement.—Except in a few respects, this is not a measure conferring administrative powers but is one laying down definitions and stating limitations. These definitions and limitations must, to be sure, be interpreted and applied by agencies affected by them in the first instance. *But the enforcement of the bill, by the independent judicial interpretation and application of its terms, is a function which is clearly conferred upon the courts in the final analysis.*
>
> "*It will thus be the duty of reviewing courts to prevent avoidance of the requirements of the bill by any manner or form of indirection, and to determine the meaning of the words and phrases used.*" (General Comments in Senate Report No. 752, 79th Cong., 1st Sess. Emphasis supplied)

The Weight of the Erroneous Holding of the Court Below

The seriousness of an erroneous holding of the Court of Appeals for the District of Columbia Circuit on a basic issue of federal administrative procedure is plain in the light of that Court's particularly heavy responsibilities in this field. Thus, to illustrate, only that Court has jurisdiction to entertain appeals from the Federal Communications Commission under Section 402(b) of the Federal Communications Act (47 U.S.C. 402(b)). That Court and that Court alone has jurisdiction to review every order of the Federal Power Commission judicially reviewable under either Section 19(b) of the

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[4] Quoted from Explanation of Section 6(c) in the June, 1954 Senate Judiciary Committee Print of the bill, Sen. Doc. 248, 79th Cong. 2nd Sess. p. 27.

Natural Gas Act (15 U.S.C. 717r), or Section 313 of the Federal Power Act (16 U.S.C. 825l), and every order of the Civil Aeronautics Board judicially reviewable under Section 1006 of the Federal Aviation Act (49 U.S.C. 1486). The great weight given that Court's opinions by other federal courts as a consequence of its special place in the administration of law by federal agencies is in itself a "special and important" reason for review by this Court on writ of certiorari. Rule 19, 1 of this Court.

The Violation of the Administrative Procedure Act and the Commission's Rules of Procedure

Section 6(c) of the Administrative Procedure Act makes it abundantly clear that private litigants before federal administrative agencies are to have the same right to obtain subpoenas authorized by law as the agencies themselves have. It provides that such subpoenas "*shall* be issued to any party upon *request* and, as may be required by rules of procedure, upon a statement or showing of general relevance and reasonable scope of the evidence sought." If any gloss on this plain command is needed the legislative history of that Act makes clear that the rights of litigants are not to be dependent on the whim or caprice of the agency. In the Senate Judiciary Committee Report on the bill which became the Act, Section 6(c) is explained as follows:

> "Statutory provisions conferring administrative subpena powers are usually incomplete. They confer powers, but say nothing of the conditions of issuance or *the rights of private parties*. Subsection (c) is designed to: (1) *Assure that private parties as well as agencies shall have a right to such subpoenas. This is an indispensable requisite to fair procedure since if the private party does not have the benefit of compulsory process he may not*

be able to secure witnesses or evidence while the agency can have such process for its own purposes." (Sen. Doc. No. 248, 79th Cong., 2d Sess. p. 27. Emphasis supplied).

There can be no doubt that the subpoena Petitioner requested is "authorized by law" as those words are used in Section 6(*c*). Section 14(*c*) of the Natural Gas Act empowers the Commission, for "the purpose of any investigation or any other proceeding under this act, . . . to . . . subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records which [it] finds relevant or material to the inquiry." No claim has been or could be tenably made that the subpoena was unauthorized by law for any of the traditional reasons, e.g., that the territorial limits of the tribunal's process would be exceeded, or that the proper witness fees were not properly tendered, or that the application for subpoena was too broad or failed to describe with particularity the documents sought, or that the evidence sought was privileged for any reason or would be inadmissible under the hearsay or any other exclusionary rule.

It follows that the subpoena requested could be denied only if Petitioner failed to meet the only other condition for its issuance found in Section 6(*c*) of the Administrative Procedure Act, namely failed to make such a "showing of general relevance and reasonable scope of the evidence sought" as the Commission might require "by rules of procedure." What showing do the rules of procedure of the Federal Power Commission require? Section 1.23(a) of its Rules of Practice and Procedure is the governing rule. *Supra*, p. 4. In terms it requires no showing in the case of

oral applications to an examiner. However, the requirement of a showing of relevance and materiality is implicit, for he is authorized "to determine the relevancy (sic) and materiality of the evidence sought and to issue such subpoenas in accordance with such determination." Written applications must "specify as nearly as may be the general relevance, (sic) materiality, and scope of the testimony or documentary evidence sought." Under this Section of its Rules the Commission has never employed any other test for issuance *vel non* of a subpoena than relevance and materiality. See *Re Texas Eastern Transmission Corp.*, 15 F.P.C. 1565; *East Tennessee Nat. Gas Co.*, 23 F.P.C. 629; *Re Gulf Oil Corp., et al.*, 23 F.P.C. 192; *Re Deep South Oil Co. of Texas*, 23 F.P.C. 852.

Petitioner made the showing required by the Commission's Rules of Procedure, for the Examiner found and the Commission did not deny that the evidence sought was relevant and material. Section 6(*c*) of the Administrative Procedure Act therefore plainly required that the application for subpoena be granted. Nothing in that Act gives either the Commission or the Courts any authority to impose any conditions on the issuance of subpoenas other than those imposed by that Section itself, i.e., (a) that the subpoena be authorized by law and (b) that Petitioner's showing comply with the Commission's rules of procedure. Yet the Court of Appeals approved what the Commission conceded in brief to it to be an *ad hoc* addition to the requirements of Section 1.23 of its Rules of Practice and Procedure, made under a claimed right "to fashion its own body of evidentiary law."[5]

In so holding the Court below allowed the Commission to violate its own rules. This was not only error,

[5] Brief for the Commission in the Court below, pp. 8, 9.

but in marked contrast to that same Court's holding just one week earlier in *Public Service Com. State of N.Y. et al. v. F.P.C., et al.*, No. 15366, et al., decided June 15, 1961, petition for rehearing denied August 3, 1961. In that case it reversed an order of the Commission denying Public Service intervention in a proceeding under Section 7(c) of the Natural Gas Act on the ground that the notice of intervention had made the showing therefor required by the Commission's rules. The Commission argued there, as it did here, that in a particular case it was free to impose greater requirements than those contained in its general rules of procedure. The Court's short answer was that while the Commission could change its rules of procedure, it could not leave them in effect and at the same time deny parties their rights thereunder. (Slip Op. on Pet. for Rehearing, p. 4). So here, the Commission has proscribed the showing an applicant for a subpoena must make in the only way Section 6(c) of the Administrative Procedure Act authorizes, i.e., by rules of procedure. As long as those rules are in effect it cannot deny a subpoena to one who makes the showing they require.

The Mis-Application of "Reasonable Scope"

We need not quarrel with the view of the Court of Appeals that whether the evidence sought by the application for subpoena was of "reasonable scope" was primarily a problem for the Commission. Assuming *arguendo* that this proposition is correct, it has no application here. The words "reasonable scope" in Section 6(c) limit the nature of the *evidence* sought. To quote the Senate Committee, the purpose was to:

> "... prevent the issuance of improvident subpenas or action by an agency requiring a detailed, unnecessary, and burdensome showing of evidence which might fall into the hands of the party's

adversaries or investigators and prosecutors (who in any event should not have access to such papers directly or indirectly)." Sen. Doc. No. 248, 79th Cong. 2d Sess., p. 27.

The Commission did not hold here that the evidence sought was unreasonable in scope. Compare *Independent Directory Corp.* v. *F.T.C.*, 188 F. 2d 468 (C.A. 2nd 1951), in which the Court upheld the denial of a subpoena *duces tecum* because of the doubtful relevancy of the documents sought and the sweeping nature of the request.[6] Compare also *E. B. Muller & Co.* v. *F.T.C.*, 142 F. 2d 511, 520 (C.A. 6th 1944), in which the Court upheld the denial of a subpoena *duces tecum* which would have required a competitor of the applicant for subpoena "to give a complete list of his customers and the sources of his operating capital."

In contrast to the holdings in these cases, the Commission and the Court here did not hold that the scope of the evidence sought was unreasonable. They held that, regardless of the scope of the *evidence sought* the *witness sought* could not be compelled to testify because his evidence would be that of an expert, and that Petitioner, in the words of the Commission, "should arrange for compensation to be paid him as an expert witness, and for his voluntary attendance at the hearing." (R. 172).

The Right to Compel Expert Testimony

This is a clearly erroneous holding. There is no requirement that a party to a proceeding make arrange-

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[6] "The subpoenas *duces tecum* which were requested and denied required the New York Telephone Company and the Reuben H. Donnelley Corporation to produce all contracts for listings and advertisements in any of their telephone directories for the years 1940-1948, inclusive, and all copy, proof, correspondence and records of telephone conversations with regard to seventeen of the witnesses and their business concerns." 188 F. 2d at p. 470.

ments for the voluntary appearance of a witness. The time-honored and only judicially recognized method of procuring a witness is by subpoena. Wigmore Evidence (3rd Ed.) Vol. 8 § 2199; *Blair* v. *U. S.*, 250 U.S. 273, 39 S. Ct. 468, 471. In the *Blair* case this Court affirmed findings of contempt for refusal to answer questions before a grand jury. Referring to the statutes authorizing the issuance of subpoenas and providing fees and mileage the Court said:

> "In all of these provisions, as in the general law upon the subject, it is clearly recognized that the giving of testimony and the attendance upon court or grand jury in order to testify are public duties which every person within the jurisdiction of the government is bound to perform upon being properly summoned, and for performance of which he is entitled to no further compensation than that which the statutes provide."

It is of course generally true that the duty "the citizen owes to his government . . . to support the administration of justice by attending its courts and giving his testimony whenever he is properly summoned"[7] does not require him to go out and acquire knowledge about the subject on which he is called to testify. This is the vital distinction which must be drawn in determining whether a subpoena may issue to an expert. See Wigmore, *ibid.*, at § 2203. This is the distinction drawn by the Court below in *Bradley* v. *Davidson*, 47 App. D.C. 266, 284, in which it reversed an order denying subpoenas to experts seeking their opinion of the value of property. It emphasized that the subpoena was "not for the purpose of compelling them to go out and make an appraisal of this property,

[7] *Blackmer* v. *U. S.*, 284 U.S. 421, 438.

but to appear on the witness stand and testify as to facts within their knowledge." In support of its holding the *Bradley* case correctly cited the holding of the Supreme Judicial Court of Massachusetts in *Stevens* v. *Worcester*, 196 Mass. 45, 56, 81 N.E. 907, that "a witness qualified as an expert as to a certain subject may be required to express an opinion regarding that subject, if he has one, but cannot be required to perform labor in order to qualify him to do so. In that case, as here, the witness had formed an opinion which he had committed to writing." This is the rule generally applied. Wigmore, *ibid.*, § 2203.

The Consequences of the Rule the Court Below Establishes

The Commission, with the *approval of the Court of* Appeals, chose to apply the rule of a small minority of jurisdictions. Wigmore (*ibid.*, § 2203) cites seven cases applying it, one of which, *Boynton* v. *R. J. Reynolds Tobacco Co.*, 36 F. Supp. 593, was decided by the District Court for the District of Massachusetts, seems to conflict with *Stevens* v. *Worcester*, *supra*, and, in any event, roundly criticizes the minority rule. If, as the great weight of authority holds, experts should and can be compelled to testify in judicial proceedings as to matters about which they have already acquired knowledge and to state opinions already formed, *a fortiori* they should and can be compelled to do so in administrative proceedings.

It is to be remembered that the primary function of administrative agencies, unlike that of the courts, is the making of expert judgments, which must be based in large part on expert opinion. As the Court below said in this very case "expert testimony . . . necessarily comprises a substantial portion of the evidence before

[the Commission]." (App., p. 4a). Hence, if experts who have already formed expert opinions cannot be compelled to testify the right to subpoena granted by Section 6(c) of the Administrative Procedure Act is rendered largely empty. Moreover, it is to be emphasized that if a private party such as Petitioner cannot compel such testimony neither can the Commission itself, for it is clear that private parties have "the same access to subpoenas as that available to the representatives of agencies." Sen. Doc. No. 248, 79th Cong. 2d Sess. p. 206.

It follows that the rule the Court below establishes will foreclose administrative agencies from access to evidence *absolutely necessary to their intelligent* discharge of their regulatory responsibilities. Furthermore, it would permit unscrupulous applicants for licenses to secure them by getting the opinions of several experts, adducing in evidence the ones favorable to them and concealing the ones unfavorable to them.

The Burden of Compliance With Subpoenas

True enough, it may be burdensome on an expert to have to testify at a lay witness' fee. But the performance of public duties is often burdensome, as for example service on a jury at a fee of $7 per day. 28 U.S.C. § 1871. They still must be performed. Thus, in *F.C.C.* v. *Cohn*, 154 F. Supp. 899 (D.C. S.D.N.Y. 1957) the Court enforced subpoenas *duces tecum* to various corporations beyond the regulatory jurisdiction of the Commission notwithstanding that they required "a mass of material, the production of which would place a considerable burden upon the respondents." Whatever the burden on an expert of complying with a subpoena, Section 6(c) of the Administrative Proce-

dure Act does not permit what was done here, namely the promulgation of a flat rule that subpoenas will not issue to experts. Both the Commission in issuing, and the Courts in enforcing, subpoenas have discretion to place appropriate restrictions and conditions on the exercise of their authority. So in the *Muller* case, *supra*, the Federal Trade Commission granted the request for subpoena only in part in order to protect the witness against disclosure of confidential information about his customers which the applicant for subpoena was not entitled to have. In *F.C.C.* v. *Cohn*, *supra*, the Court, pointing out that a proceeding on an administrative subpoena is equitable in character[8] and that it had discretion to condition or modify it,[9] exercised its discretion by directing that the time and spacing of the production of documents be arranged by the Commission so as to lighten the burden on the respondents, and by ordering that certain documents be treated as confidential by the Commission. Both the Commission and the Courts have that same discretion in the case of subpoenas to experts.

In this case, the person sought by the subpoena, who was duly served with Petitioner's application therefor (R. before F.P.C., p. 3372), made no objection to its issuance. Since this fact reasonably raises the inference that he did not think compliance with it would be unduly burdensome, and Petitioner's application met the requirements of Section 6(c) of the Administrative Procedure Act and the Commission's governing rule, there was no basis on which to deny it.

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[8] *Shotkin* v. *Nelson*, 146 F. 2d 402 (C.A. 10th 1944).

[9] *N.L.R.B.* v. *Anchor Rome Mills*, 197 F. 2d 447 (C.A. 5th 1952).

The subpoena should have issued. Appropriate conditions respecting compensation to Mr. Lockwood could thereafter have been imposed, either by the Commission in proceedings on a motion to quash or by a court in proceedings to enforce or both.

CONCLUSION

For the reasons set forth in this Petition, Virginia Petroleum Jobbers Association prays that a writ of *certiorari* issue to the United States Court of Appeals for the District of Columbia Circuit, and that upon review of the record in this cause its judgment be reversed and this cause remanded to it with directions to remand it to the Federal Power Commission with directions to vacate its order granting the application of Blue Ridge Gas Company, to grant Petitioner's application for subpoena, and to convene further hearings for the taking of evidence on the matters set forth in said application and any other relevant matters arising since the close of the hearings, and thereafter to reconsider the whole record and make proper findings and conclusions thereon.

Respectfully,

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